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SENSITIVE

DEPARTMENT FOR L/LEI, JUSTICE FOR OIA, PARIS FOR DOJ KEN HARRIS

E.O. 12958: N/A

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SUBJECT: MEETING WITH THE PORTUGUESE ON THE EXTRADITION AND MLA PROTOCOLS

¶1. On December 10, USEU Senior Counsel Mark Richard, Embassy Paris Justice Attache Ken Harris and USEU/NAS Frank Kerber attended a meeting arranged by Embassy Lisbon in an attempt to explore the possible options for resolving outstanding issues with respect to the conclusion of the Portuguese protocols to the EU-U.S. Mutual Legal Assistance and Extradition Conventions. The meeting was with Ms. Mariana Sotto Maior and Mr. Nuno Pinheiro Torres of the Portuguese Justice Ministry. Guy Stessens of the EU Council Secretariat also attended.

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¶2. The U.S. side opened the meeting by pointing out that during the course of the negotiations we have given Portugal more than any other EU Member State by way of concessions in an effort to accommodate their domestic needs, including the inclusion of the non-derogation clause as well as the provision for consultations if there is a dispute over the granting of extradition. We were not attempting to modify the status quo with respect to either the death penalty or life imprisonment issue in any of the negotiations with respect to the issues of concern to Portugal. They in turn should not seek to renegotiate the agreements to which they, along with their fellow Member States, had agreed over a year ago.

¶3. To highlight this issue for their domestic purposes it was pointed out that they can assert that they are not opting to utilize the current death penalty article contained in the negotiated text, but were retaining their current position based on the fact that their constitutional limitations superseded the conclusion of the current bilateral instruments and that they believed that those provisions controlled the bilateral relationship on these points. The U.S., of course, would continue to disagree with them on their legal conclusion, but it would take the issue away from the new conventions and just reflect that the status quo was being maintained.

¶4. It was further pointed out that we continue to sign protocols with other Member States, and the Portuguese acknowledged that this fact is putting pressure on them not to become an obstacle to getting these agreements ratified and in place. We said we were prepared to meet with their Parliamentary bodies to explain the situation if they thought this would assist them in convincing them not to oppose the instruments. The Portuguese said Parliament could not address this issue until probably March, and that one Parliamentary option is for them to submit the matter to the Constitutional Court for its opinion before forwarding it to the President for his approval.

¶5. The two sides agreed to proceed as follows: a) We would begin immediately to try to resolve the minor outstanding administrative issues concerning the protocol that neither side thought posed major problems; and b) They would consult with the Minister of Justice and see if he endorses the approach suggested above. If so, they would draft a proposed note reflective of that view for our consideration. In any event, they will keep us advised of the position of the Minister.

¶6. Comment: Mr. Torres was clearly inclined to think creatively about the issues, in contrast to Ms. Sotto Maior who seemed fixed in her position that the communication transmitted to us last spring remained the position of Portugal. End comment.

McKinley